

8-26-05

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION

IN THE MATTER OF:	:	CASE NUMBER
	:	
RICHARD DAVIS STEPHENS, SR.	:	05-10320-WHD
LINDA BOEHNE STEPHENS,	:	
	:	
Debtors.	:	
_____	:	
	:	
RICHARD DAVIS STEPHENS, SR.	:	
LINDA BOEHNE STEPHENS,	:	
	:	
Movants,	:	
	:	
v.	:	
	:	
PARK VILLAS HOMEOWNERS	:	
ASSOCIATION, INC.,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Respondent.	:	BANKRUPTCY CODE

ORDER

Before the Court is a Motion to Avoid Lien filed by the Debtors in the above-referenced bankruptcy proceeding. Park Villas Homeowners Association, Inc. (hereinafter the "Respondent") has objected to the Motion. Following a hearing held on May 6, 2005, the Court took the Debtors' motion under advisement. This matter constitutes a core proceeding, over which this Court has jurisdiction. See 28 U.S.C. §§ 157(b)(2)(A), (K), (O); 28 U.S.C. § 1334.

FINDINGS OF FACT

1. The Debtors filed a voluntary petition under Chapter 7 of the Bankruptcy Code on January 28, 2005. The first meeting of creditors in the Debtors' case was held and concluded on March 3, 2005.
2. The Debtors owned no real property at the time of the filing of their petition. *See* Debtors' Schedule A. The Debtors owned certain household goods, clothing, jewelry, and vehicles at the time of the commencement of their bankruptcy case. *See* Debtors' Schedule B.
3. The Debtors claimed their household goods, clothing, jewelry, and two vehicles as fully exempt property, pursuant to O.C.G.A. § 44-13-100(a)(3)-(6). *See* Debtors' Schedule C.
4. The Respondent obtained a judicial lien against the Debtors on December 3, 2003.

CONCLUSIONS OF LAW

Section 522(f) provides that a debtor may “avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled.” 11 U.S.C. § 522(f)(1). To be avoidable, a lien must be either a judicial lien or a nonpossessory, nonpurchase money security interest in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry “that are primarily held for the personal, family, or household use of the debtor” or debtor’s dependent; implements, professional books, or tools of the trade

of the debtor or debtor's dependent; or professionally prescribed health aids for the debtor or a dependent of the debtor. *Id.*

In this case, the Debtors have filed a motion to avoid the Respondent's lien on the basis that the lien is a judicial lien, as specified in § 522(f)(1)(A), which impairs exemptions to which the Debtors are entitled. The Respondent objects to the Motion on the basis that the Debtors are not entitled to avoid its lien to the extent that it has attached to certain real property that the Debtors owned prior to the filing of the Debtors' bankruptcy petition. According to the brief filed by the Debtors, it does not appear that the Debtors are attempting to avoid any lien that may or may not have attached to the real property.

The Debtors have claimed their household goods and furnishings (valued at \$3,300), clothing (valued at \$250), jewelry (valued at \$150), a 1999 van (valued at \$1500), and a 1980 truck (valued at \$500). No party has filed a timely objection to the Debtors' exemptions. *See* FED. R. BANKR. P. 4003(b) (objections to exemptions must be filed within 30 days after the first meeting of creditors is concluded or within 30 days after any amendment). Therefore, the exemptions are deemed allowed. *See Gamble v. Brown (In re Gamble)*, 168 F.3d 442 (11th Cir.1999).

To determine whether the Respondent's lien impairs the Debtors' exemption in these items, the Court must consider the provisions of § 522(f)(2)(A). Section 522(f)(2)(A) provides that "a lien shall be considered to impair an exemption to the extent that the sum of— (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that

the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).


In this case, the Debtors scheduled the amount of the Respondent's lien as \$5,600, it does not appear that there are any other liens against these items, and the Debtors are entitled to claim a total exemption of \$5,700 in the exempt property. Because the Debtors have exempted the full value of these assets, the sum of the exemption and the lien amount necessarily exceeds the value that the Debtors' interest in the exempt property would have in the absence of any liens. Accordingly, the Respondent's lien impairs an exemption to which the Debtors would have been entitled in the absence of any liens, and the Respondent's lien against the exempt property may be avoided.

CONCLUSION

In accordance with the above discussion, the Debtors' motion to avoid lien is hereby **GRANTED**. The Respondent's lien, if any, against the Debtors' household goods and furniture, clothes, jewelry, and two vehicles, is hereby avoided.

IT IS SO ORDERED.

At Newnan, Georgia, this 26 day of August, 2005.



W. HOMER DRAKE, JR.

UNITED STATES BANKRUPTCY JUDGE